IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 12273 of 2007(J)

PETITIONER:

M.V.EBRAHIM, ARAFA TRADERS,
P.O.SIVAPURAM, KANNUR DISTRICT.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:
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1. **ASSISTANT COMMISSIONER (ASSESSMENT),**
   COMMERCIAL TAXES, SPECIAL CIRCLE,
   KANNUR.

2. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, KOZHIKODE.

3. **TAHSILDAR (REVENUE RECOVERY),**
   THALASSERY.

BY SR.GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2002-03 DTD. 26/08/2006.**
EXT.P2;	**COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 13/10/06.**
EXT.P3:	**COPY OF THE PETITION FOR STAY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 13/10/2006.**
EXT.P4:	**COPY OF THE DEMAND NOTICE U/S.7 OF THE RR ACT ISSUED BY 3RD RESPONDENT DTD. 19/12/05.**
EXT.P5:	**COPY OF THE ORDER PASSED BY 2ND RESPONDENT DTD. 21/03/2007.**
EXT.P6:	**COPY OF THE APPLICATION FOR ADJOURNMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 16/03/2007.**
EXT.P7:	**.....DO...DO....DO..... DTD. 21/03/2007.**
EXT.P8:	**COPY OF THE ASSESSMENT ORDER (REVISED) PASSED BY 1ST RESPONDENT FOR THE YEAR 2002-03 DTD. 15/02/2005.**
EXT.P9:	**COPY OF THE PAYMENT OF CHEQUE DTD. 13/09/2005.**
EXT.P10;	**COPY OF THE LETTER DTD. 9/01/2006.**
EXT.P11:	**COPY OF THE CERTIFICATE NO.35015911/2002-03 DTD. 09/01/2006.**

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.12273 OF 2007-J

Judgment

The petitioner is aggrieved by Ext.P5, which is an interim order, dismissing Ext.P3 stay application filed by him along with Ext.P2 appeal. He submits, the said order is passed without hearing him.

2. I heard the learned Government Pleader also. It can be seen from Ext.P5 that notices were issued to the petitioner thrice, but, he sought adjournment. The petitioner has got a grievance that the notice was served on him belatedly. Having regard to the directions issued by this Court in Writ Petition (C) No.27779/06, the petitioner should have moved the interlocutory application and obtained stay, instead of sitting comfortably for receipt of notice from the appellate authority and seeking adjournment, when it is served. But, having regard to the contentions of the petitioner regarding the merits of the case, I feel that it is a matter which should be examined by the appellate authority after affording an opportunity of being heard to the petitioner. Accordingly, Ext.P5 is quashed. The 2nd respondent is directed to consider and pass orders on Ext.P3 stay application in accordance with law within two weeks from the date of receipt of a copy of this Judgment. If the petitioner pays Rs.1 lakh within one week from today, the attachment of the movables will be kept in abeyance for a period of one month from today.

The Writ Petition is disposed of as above.

10.04.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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